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FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SEP 22 1993

AT 8:30 M
WILLIAM T. WALSH
CLERK

02-43-0047
02-41-0207

UNITED STATES OF AMERICA,
Plaintiff,

v.

FORD MOTOR COMPANY, FORD *
INTERNATIONAL SERVICES, INC.,)
and THE BOROUGH OF RINGWOOD, *)
Defendants.)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CIVIL ACTION NO. 91-4281 (XLS)

Hon. N. Lee. Sarokin

CONSENT DECREE

ENTERED

on
THE DOCKET
on 9/23/93
WILLIAM T. WALSH, CLERK
By *[Signature]*
(Deputy Clerk)

240076



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I. BACKGROUND

A. The United States of America, at the request of the Administrator of the United States Environmental Protection Agency (EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, Liability Act of 1980, as amended by the Superfund Amendments Reauthorization Act of 1986, ("CERCLA") 42 U.S.C. § 9607.

B. The United States in its complaint seeks reimbursement of response costs it has incurred under Section 104 of CERCLA, 42 U.S.C. § 9604, in connection with conducting actions in response to the release or threatened release of hazardous substances at the 455 acre site located immediately west of the Town of Ringwood, in the northeast corner of Passaic County, New Jersey, known as the Ringwood Mines/Landfill Site.

C. The release or threatened release of hazardous substances at or from the Site has caused the United States to incur response costs.

D. The United States and Settling Defendants agree and this Court, by entering this Decree, finds that settlement of this matter will avoid prolonged and complicated litigation and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607 and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. The complaint of the United States states a claim upon which relief may be granted. Solely for the purposes of this Consent Decree and the underlying complaint, the Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District and shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon the Settling Defendants and their successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA shall have the meaning assigned to them in CERCLA. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto the following definitions shall apply:

"Borough of Ringwood" shall mean the Borough of Ringwood, located in Passaic County, New Jersey, and includes, but is not limited to, the Ringwood Solid Waste Management Authority, and any and all successors in interest, the members of the Borough's council, directors and officers of the Ringwood Solid Waste Management Authority, and any and all department heads, employees, servants and/or agents of the Borough of Ringwood, including the Borough Attorney.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.

"Consent Decree" shall mean this Decree and any attached appendices.

"Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal Holiday, the period shall run until the close of business of the next working day.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Ford" shall mean Ford Motor Company and Ford International Services, Inc.

"Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of Title 26 of the U.S. Code, in accordance with 42 U.S.C. § 9607(a). In

calculating the interest EPA may compound on a daily, monthly or annual basis.

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States and each and every Settling Defendant.

"Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs that EPA and the U.S. Department of Justice on behalf of EPA have incurred through the date of entry of this Consent Decree for the Ringwood Mines/Landfill Superfund Site (the "Site"), plus accrued interest on all such costs through the date of entry of this Consent Decree other than interest as provided in paragraph 5; except that Past Response Costs do not include costs incurred by EPA between April 1, 1992 and the date of entry of this Consent Decree that are attributable to oversight of Ford's obligations pursuant to Administrative Order on Consent, Index Number II-CERCLA 70102 (dated June 26, 1987) and Administrative Order on Consent, Index Number II-CERCLA 90108 (dated August 25, 1989).

"Plaintiff" shall mean the United States.

"RCRA" shall mean the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on September 29, 1988 by the Regional Administrator, EPA Region II, and all attachments thereto.

"Section" shall mean a portion of this Consent Decree identified by a roman numeral.

"Settling Defendants" shall mean the Borough of Ringwood and Ford.

"Site" shall mean the Ringwood Mines/Landfill Superfund Site, encompassing approximately 455 acres in the Borough of Ringwood which is in the northeast corner of Passaic County, New Jersey.

V. REIMBURSEMENT OF RESPONSE COSTS

4. Payments of Past Response Costs to the United States.

Within 30 days of entry of this Consent Decree, Settling Defendant Ford shall pay to the United States \$435,600 for Past Response Costs, and Settling Defendant the Borough of Ringwood shall pay \$144,700 for Past Response Costs. These amounts include interest on Past Response Costs through the date of entry of this Consent Decree in accordance with 42 U.S.C. § 9607(a). Each Settling Defendant is solely responsible for its payment as specified in this paragraph. Payments are to be made by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing the CERCLA Site ID Number NJD 0262 and the DOJ file number 90-11-3-830. Payments shall be made in accordance with instructions provided by the Plaintiff to the Settling Defendants upon execution of the Consent Decree. Any EFTs received at the U.S. D.O.J. lockbox bank after 11:00 A.M. (Eastern Time) will be credited on the next business day.

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VI. FAILURE TO MAKE TIMELY PAYMENTS

5. Interest on Late Payments. In the event that any payment required by Section V is not made when due, Interest, as provided for in Paragraph 3, shall continue to accrue on the unpaid balance from April 1, 1992, through the date of payment.

6. Stipulated Penalty. If any amount due to the United States under this Consent Decree is not paid by the required date, the defaulting Defendant shall pay as a stipulated penalty, in addition to the Interest required by Paragraph 5, \$5,000 per day for each day or portion thereof that such payment is late. A stipulated penalty is due and payable within 30 days of the defaulting Defendant's receipt from EPA of a demand for payment of the penalty. The liability to pay this stipulated penalty is not contingent upon receipt of a demand for payment. All payments under this Paragraph shall be paid by certified check made payable to "EPA Hazardous Substance Superfund," shall be mailed to EPA Region II, U.S.E.P.A. Superfund, Attention/Superfund Accounting, P.O. Box 360188M, Pittsburgh, PA 15251 and shall reference CERCLA ID Number NJD 0262 and DOJ Case Number 90-11-3-830. Copies of checks paid pursuant to this Paragraph, and any accompanying transmittal letter, shall be sent to the United States as provided in Section X.

7. If the United States brings an action to collect any payment required by this Consent Decree, each defaulting Defendant against whom a collection action is filed shall reimburse the United States for all costs of such action, including but not limited to all attorneys fees.

8. Payments made under Paragraphs 5-7 shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of any Settling Defendant's failure to make timely payments required by this Decree.

VII. COVENANT NOT TO SUE BY PLAINTIFF

9. Covenant Not to Sue. Except as specifically provided in Paragraph 10, the United States covenants not to sue each Settling Defendant for any liability created by Section 107 of CERCLA or RCRA Administrative Order Index Number II-3013-40102 (dated March 16, 1984), to recover Past Response Costs as defined under this Consent Decree. This covenant not to sue extends only to the Settling Defendants and does not extend to any other person. As to each Settling Defendant this covenant not to sue shall take effect upon receipt by the United States of full payment of all amounts as required by each Settling Defendant and as set forth in Sections V and VI of this Consent Decree.

10. Reservation of Rights

a. General. The covenant not to sue set forth in the preceding paragraph does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters. Except as provided in the preceding paragraph, nothing contained herein shall in any way limit or restrict the response and enforcement authority of the United States to initiate appropriate action, either judicial or administrative, under Sections 104, 106, and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606,

and 9607, or any other provision of law, against Settling Defendants or against any other person or entity not a party to this Decree.

b. Specific reservations. The covenant not to sue set forth in Paragraph 9 above does not apply, inter alia, to the following:

- (1) claims based upon failure of a Settling Defendant to meet the requirements of this Consent Decree;
- (2) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting to natural resources, as defined in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16);
- (3) claims for costs incurred by any natural resources trustee;
- (4) claims based upon criminal liability;
- (5) claims for response costs incurred by any federal agency other than those specified within the definition of Past Response Costs in this Consent Decree;
- (6) claims for injunctive relief or administrative order enforcement under Section 106 of CERCLA, including enforcement of Administrative Order on Consent, Index Number II-CERCLA-70102 (dated June 26, 1987); and Administrative Order on Consent Index Number II-CERCLA-90108 (dated August 25, 1989);
- (7) claims for response costs incurred or to be incurred by the United States, on behalf of any federal

agency, in connection with the Site that are not within the definition of Past Response Costs set forth in Paragraph 3.

VIII. COVENANTS BY SETTLING DEFENDANTS

11. Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Past Response Costs or this Consent Decree for any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA §§ 106(b)(2), 111, 112, or 113 or any other provision of law. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

IX. EFFECT OF SETTLEMENT: CONTRIBUTION PROTECTION

12. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

13. Nothing in this Consent Decree shall be construed to release Ford from its obligations under Administrative Order on Consent, Index Number II-CERCLA 70102 (dated June 26, 1987) and Administrative Order on Consent, Index Number II-CERCLA 90108

(dated August 25, 1989). Ford has satisfied its obligation to pay oversight costs incurred by EPA through April 1, 1992 pursuant to the above referenced administrative orders. Ford has also satisfied its obligations to pay the costs attributable to RCRA Administrative Order Index Number II-3013-40102 (dated March 16, 1984) and CERCLA Administrative Order Index Number II-CERCLA 70101 (dated June 26, 1987).

14. With regard to claims for contribution against Settling Defendants, upon receipt by EPA of the payments required by this Consent Decree, each Settling Defendant is entitled to the protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for the Past Response Costs.

15. Settling Defendants agree that with respect to any suit or claim for contribution brought for Past Response Costs by each of them for matters related to this Consent Decree, each will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendants also agree that with respect to any suit or claim for contribution brought for Past Response Costs against them for matters related to this Consent Decree each will notify the United States in writing within 10 days of service of the complaint on them. In addition, unless the United States is a party, Settling Defendants shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial for matters related to this Consent Decree.

16. Settling Defendants covenant that in any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of future response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claims splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant action. Settling Defendants shall not be precluded by the provisions of this paragraph from asserting and/or maintaining any defense against the Past Response Cost Claims, based upon the contention that such claims were brought by the United States in the instant action, should such claims be raised again by the United States in any subsequent proceeding and nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Paragraph 9.

X. NOTICES AND SUBMISSIONS

17. Whenever, under the terms of this Consent Decree, written notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice

requirement of the Consent Decree with respect to the United States, EPA, and Settling Defendants, respectively.

As to the United States:

John C. Cruden, Esquire
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: 90-11-3-830

As to EPA:

Virginia A. Curry, Esquire
Assistant Regional Counsel
U.S. Environmental Protection Agency
26 Federal Plaza
New York, New York
(212) 264-2838

As to Settling Defendant FORD:

Robert E. Costello, Esquire
Office of the General Counsel
Ford Motor Company
728 Parklane Tower East
One Parklane Blvd.
Dearborn, Michigan 48126
(313) 322-1966

As to Settling Defendant Borough of Ringwood:

Kathleen D. Canicola
Borough Clerk/Manager
60 Margaret King Avenue
Ringwood, New Jersey 07456
(201) 962-7002

Barbara Hopkinson-Kelly, Esquire
Wilson, Elser, Moskowitz, Edelman & Dicker
One Gateway Center, Suite 1600
Newark, NJ 07102-5311
(201) 624-0800

XI. RETENTION OF JURISDICTION

18. This court shall retain jurisdiction of this matter for the purpose of enforcing the terms of this Consent Decree.

XIII. SIGNATORIAL SERVICE

19. Each undersigned representative of a Settling Defendant to this Consent Decree and the Chief of the Environmental Enforcement Section in the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

20. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree.

XVI LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

21. This Consent Decree shall be lodged with the Court for a period of thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate.

22. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is

voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the parties.


SO ORDERED THIS 22 DAY OF Sept, 1993
William L. Carver

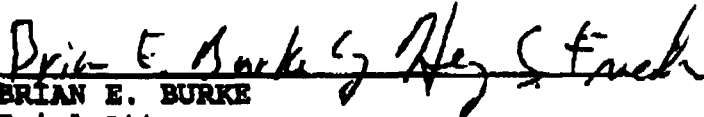
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of The United States of America v. Ford Motor Company, Ford International Services, Inc., and the Borough of Ringwood, (Civil Action No. 91-4281 HLS) relating to the Ringwood Mines Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date:

7.11.93


JOHN C. CRUDEN
Chief, Environmental Enforcement
Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530



BRIAN E. BURKE
Trial Attorney
Environmental Enforcement Section
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Washington, D.C. 20530

MICHAEL CHERTOFF
United States Attorney



By:

SUSAN C. CASSELL
Assistant United States Attorney
970 Broad Street
Newark, New Jersey 07102


WILLIAM J. MUSZYNSKI
Acting Regional Administrator
U.S. Environmental Protection
Agency
26 Federal Plaza, Room 906
New York, New York 10278
(212) 264-0396

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of the United States v. Ford Motor Company, et al. Civil Action No. 91-4281-HLS, relating to the Ringwood Superfund Site.

FOR DEFENDANT FORD INTERNATIONAL SERVICES, INC.

Date:

APR 05 1993

APR 05 1993



JOHN M. RIEKMANN
Assistant Secretary
Ford International Services, Inc.

Norman Barnstein, Esquire
Arent Fox Kintner Plotkin & Kahn
1050 Connecticut Avenue, NW
Washington, DC 200036-5339
(202) 857-6438

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of the United States v. Ford Motor Company, et al. Civil Action No. 91-4281-HLS, relating to the Ringwood Superfund Site.

FOR DEFENDANT FORD MOTOR COMPANY

Date: APR 05 1993



JOHN M. RINTAMAKI
Assistant Secretary
Ford Motor Company

Norman Barnstein, Esquire
Arent Fox Kintner Plotkin & Kahn
1050 Connecticut Avenue, NW
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(202) 857-6438

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of the United States v. Ford Motor Company, et al. Civil Action No. 91-4281-HLS, relating to the Ringwood Superfund site.

FOR DEFENDANT BOROUGH OF RINGWOOD

Date:

2/25/93

GILES W. CASALEGGIO, Mayor

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